

Reform Path and System Construction of Rural Homestead Use Right System in China

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Abstract

Rural homestead system is an important part of China's rural land system. It is the result of the birth of China's land, which is poor in per capita resources and needs fair and reasonable distribution to protect the rights and interests of the majority of people. In recent years, the system of rural homestead use right in China has been developing and improving, but there are still many practical problems, such as the unclear subject of homestead use right, restricted circulation of homestead use right, restricted inheritance, withdrawal of homestead use right and imperfect guarantee mechanism. The rural land system in China still needs to clear the land obtained subject, improve the system of right to use homestead circulation, explore out of housing land use right and its guarantee mechanism, etc. This paper aims to draw on these issues and put forward some suggestions for effective reform of China's rural homestead use right system.

Keywords: homestead use right, land system, rural land, reform path, system construction

1. Introduction

"Homestead" is a unique legal concept with distinct Chinese characteristics in China. Other countries in the continental law system and European and American law systems do not have the concept of homestead, except a relevant legal system. There are provisions of "land right" in some civil law countries, but there is no concept of "homestead". The term "homestead" denotes the land collectively owned by collective economic organizations residing for rural families (Land and Housing Policy Reforms in China, 2022). Liu (2018) remarks that homestead plays a significant role in maintaining social stability and protecting cultivated land (Liu & et al., 2018). The term homestead was first used in a formal legal document in reply to the issue of Rural and Urban Homestead Ownership issued by the Supreme People's Court in 1963. After that, the word homestead was popularly used in many documents issued by the Supreme People's Court and the State Council. However, there has been no clear regulation on the concept of homestead use right in China. The concept of the use right of homestead given in basic terms of National Standard Land of the People's Republic of China is: the use right of collective land for construction, which is allocated to its members for building houses and other related appendages after examination and approval by rural collective economic organizations without limitation of use term (Liang, 2021). Although the concept of homestead use right has not been clearly defined in China, the legal attribute of homestead use right has been clearly defined as usufructuary right in the Civil Code. Usufructuary right refers to the right to possess, use and benefit from the property owned by others without the right to dispose

of it. Farmers' right to use rural homestead includes the right to possess, use and profit, and the ownership of rural homestead belongs to collective economic organizations; but farmers do not have the right to dispose of the homestead, so the right to use homestead belongs to the usufructuary right. Although farmers have been given the right to use a homestead, but in real life, the right of farmers have often been neglected in terms of requisition of land by the government and their migration to cities. Moreover, the existence of urban-rural dual land system creates a number of problems, including fast conversion of farmland, damaging farmers' right, increasing land conflict, and accelerating the gap between urban and rural areas (Qu & et al., 1995; Chen & Davis, 1998; Ding, 2003; Ling & Ho, 2005; Han, 2018; Liu, 2014; Chen, 2018; Bryan & et al., 2018).

The subject of the right to use homestead has certain specificity (Liang, 2021). The main body of rural homestead use right is a member of rural collective economic organization. This one characteristic also is decided by the social welfare nature of homestead. The country sets collective organization's each member can obtain a homestead free to ensure the basic living conditions and living conditions of farmers. If we break through the restriction that the main body is a member of the rural collective economic organization, the social welfare function of the right to use homestead will be weakened to some extent. The acquisition of the right to use rural homesteads is free (Liang, 2021). The right to use rural homestead has certain social welfare attributes, and its purpose is to protect the right of habitation of usufructuary right holders. Therefore, the members of rural collective economic organizations can be free to apply for the use of the village homestead and do not need to pay other fees. The period of using rural homestead land is long-term (Liang, 2021). There is no specific regulation on the use period of village homesteads in China. Because the property right itself is long-term and rural homestead belongs to usufructuary right; so, the term of use of homestead right is also long-term. The right to use homestead is restricted to a certain extent (Liang, 2021). Usufructuary rights include possession, use, and income. As a superior property right, the usufruct of homestead can be restricted to some extent. Because the law stipulates that the homestead is only used to build houses and auxiliary facilities so as to protect the right of residence of farmers, but the transfer of the right to use the homestead cannot obtain economic benefits in the market transaction.

2. The Main Problems in the Use of Rural Homestead

2.1 The Subject of Obtaining the Right to Use Rural Homestead

In China, there are no legal provisions to clearly stipulate the subject of obtaining the right to use rural homestead. Article 362 to article 365 of Chapter 13 of the Civil Code stipulates the right to the use of rural homestead, but it does not clearly define the scope of the subject to acquire the right to the use of rural homestead.

Article 62 of the Land Management Law stipulates the system of one household and one house. However, there is no provision on how to identify the "household" in "one household and one house" in the current law of China. Due to the differences in traditional habits and other aspects in different rural areas across the country, the standards for households are different in different regions. In some areas, the standard for identifying households is whether they are adults or married; some need the neighborhood committee to prove that they have been separated, and in some provinces, it is directly stipulated by the government according to the actual situation.

In 2020, the General Office of the Ministry of Natural Resources of the People's Republic of China issued a letter on printing and distributing the Work of Confirming and Registering the right to use Homestead and Collective Construction Land. Where there is no local regulation, it can be determined in accordance with the following principles: first, it is based on the household registration information of the public security department, and at the same time, it shall meet the local conditions for applying for building houses on homestead; second, if it is impossible to identify the right to use the homestead according to the household registration information, it can be identified referring to the situation of local farmers contracting collective land in the family contract system of rural collective land, combining with the mode of villager autonomy. However, such selective regulation is likely to cause "dispute" between some departments; that is, the public security department requires an independent address before the household can be divided into households, and the household registration examination and approval department require household registration before the use of homestead can be approved. Therefore, in July 2020, the Ministry of Natural Resources and the Ministry of Agriculture and Rural Affairs jointly issued the Notice on Guaranteeing reasonable Land use for Rural Villagers' Housing Construction (Natural Resources Development (2020) No. 128), explicitly requiring attention to the rationality of household division, making a good connection with household registration management, and not setting up mutually preemptive application conditions. In other words, so far, there are no national unified specific provisions on the identification of households in China (Zhong, 2021).

However, relatively speaking, the scope of the original subject of rural homestead use right is relatively unified in China; that is, only the members of the collective economic organization have the original subject qualification of homestead use right. However, there has been a great controversy on the subject qualification of

rural homestead use right succession. For example, the People's Court of Mazhang District of Zhanjiang City, Guangdong Province denied the qualification of members of rural collective economic organizations as general transferees of the right to use homestead in the Civil Judgment No. 861 (2018) of Guangdong 0811. However, the intermediate People's Court of Xiangtan City, Hunan Province affirmed the qualifications of the internal members of rural collective economic organizations as the general transferable subjects of the right to use homestead in the Civil Judgment No.210 of Tanzhong Minyi Zhongzi (2011). In addition, there are disputes in practice about whether the external members of rural collective economic organizations have the qualification of general transferee subject to the right to use homestead, and whether the internal members of rural collective economic organizations have the qualification of inheritance subject to the right to use homestead, and there are different views in different court cases.

2.2 The Procedural Problem for Obtaining the Right to Use Rural Homestead

The purpose of obtaining the right to use rural homestead is to protect the interests of farmers, but according to the "Land Management Law" article 62 clause 3, the acquisition of the right to use rural homestead needs to be "reviewed by the township (town) people's government, approved by the county people's government where the occupation of agricultural land is involved, the examination and approval procedures for the conversion of agricultural land shall be handled in accordance with the law." This provision completely ignores the rural collective land-use right holders and the status and role of farmers and collectives. This is contrary to its legislative purpose.

In addition, even though the law has stipulated that the acquisition of the right to use homestead needs to be approved by the government, in reality, it often applies only to village leaders and other village cadres but not to the government. Because in some rural areas, there are a lot of procedures for it. In many rural areas, the party concerned can obtain the right to use the land as long as the village cadres agree with the party's application for the right to use the land without the government's approval. Moreover, the "Land Management Law" does not stipulate that the rural cadres should bear the legal responsibility for approving the applicants' use of homestead without the approval of the township government and the county people's government, which further promotes the chaos of the rural cadres' disorderly approval of homestead.

2.3 Legal Obstacles to the Inheritance of the Right to Use the Rural Homestead

The use right of rural homestead has a strong agricultural attribute; so, the inheriting subject of the use right of rural homestead is often restricted within the scope of members of rural collective economic organizations. If the non-members of the rural collective economic organization or the members of the village collective economic organization want to obtain the inheritance subject qualification of the right to use the homestead, it is often limited in practice. Nowadays, more and more farmers gradually give up or lose their membership in rural collective economic organizations due to various reasons such as entering school or working. As legal heirs, they will be hindered if they want to inherit the decedent's right to use rural homestead. With the continuous advancement of urbanization in China, the proportion of rural population is decreasing, and this scenario gradually has become more and more serious. If the inheritance mechanism of rural homestead use right is not timely improved, it will not be conducive to the stable development of the rural economy in China.

2.4 Existing Problems for Obtaining and Changing the Right to Use the Rural Homestead

At present, the construction of rural homestead use right system in China is not perfect, many regulations are not clear, and there are even legislative conflicts. First of all, the legal provisions are not clear. There are many principles and regulations about the acquisition and change of the right to use rural homestead, but have few specific regulations. For example, the system of one family and one house on rural homestead is stipulated, but there is no relevant regulation on how to deal with the situation of multiple houses in one family caused by the homestead user obtaining the right to use the homestead through inheritance. Secondly, there are contradictions between homestead law and policy, and between policy and policy. For example, the contradiction between rural homestead use right mortgage and rural house mortgage system, the contradiction between one family and one house system and the contradiction between one family and many houses caused by the system of homestead goes with the house. These contradictions, if not promptly resolved, will lead to the decline of the authority of the law, which is not conducive to the construction of the rule of law road.

3. The Reform Path of Rural Homestead Use Right System

3.1 Clarifying the Subject Scope of Obtaining the Right to Use Rural Homestead

First of all, we must make clear the scope of the original subject of rural homestead use right. Many scholars in the legal circle oppose the circulation of the right to use rural homestead and advocate the restriction of the circulation of the right to use rural homestead. One of the important reasons makes them worry that the circulation of the right to use rural homestead will make people feel profitable, so they try their best to apply for homestead and cause the loss of a large amount of farmland. Clarifying the subject range of homestead use right

can fundamentally eliminate this worry.

The subject of obtaining the right to use rural homestead should be a member of the rural collective economic organization, and the identification of the rural collective economic organization should not be based on household registration alone. Because in some areas of the country, a large number of migrant farmers who go out to work and settle down. Although they have registered permanent residence in their village, they are actually separated from the collective economic organization of their own village. It is easier for them to be identified as members of the collective economic organization of their village according to their registered permanent residence and to be granted the right to use rural homestead to obtain the qualification of the main body, which will lead to a large number of rural homestead idle. Of course, not all residents who do not live in the village are members of the collective economic organization of the village. Therefore, the judgment of the rural collective economic organization should be related to the actual situation, and its identification should be based on the willingness to become the village collective economic organization and the recognition of the members of the village collective economic organization, and then the focus of work, life, living conditions and other factors of the parties to determine (Zhang, 2020).

3.2 Standardising the Procedures for Obtaining the Right to Use Rural Homestead

The Land Administration Law should more comprehensively and strictly regulate the procedures for obtaining the right to use rural homestead. In the relevant provisions on illegal liability, in addition to the illegal occupiers of land, the village cadres and government personnel should also be required to bear corresponding legal liabilities for their behaviors of not approving homestead in accordance with legal procedures. In addition, we should pay attention to the following issues in the process of obtaining and using homesteads according to relevant laws:

- (1) Rural villagers can only own one homestead per household, and the area of homesteads shall not exceed the standards stipulated by provinces, autonomous regions, and municipalities directly under the Central Government.
- (2) Rural villagers must use the residential land in accordance with the approved purposes. The person who has obtained the right to use the land for housing shall not change its use without authorization. Otherwise, the land owner has the right to recover the right to use the homestead. Because the homestead is of certain welfare nature, its use cannot be arbitrarily changed. If it is changed, it must comply with legal conditions and procedures.
- (3) After the transfer of the right to use the homestead, the applicant shall not apply for the homestead again. Economic benefits can be obtained from transferring the right to use homestead. If rural villagers are allowed to apply again after transferring the right to use homestead, it is tantamount to a disguised admission of profiting from applying for the right to use homestead, which is contrary to the welfare nature of the right to use homestead and does not accord with the essence of “one family, one house”. Only those housing land lost due to natural reasons can be re-distributed to housing land.
- (4) The house site should be used as much as possible in the village, do not occupy arable land. If it is necessary to occupy agricultural land, relevant examination and approval procedures shall be gone through.

3.3 Improving the System for Transferring the Right to Use Homestead

As mentioned above, the circulation system of rural homestead use right in China is not clear, so China should strengthen relevant legislation so that rural residents have laws to abide by in the process of homestead use right transaction. In addition, compared with land system reforms (LSRs), China’s homestead system reform began relatively late (Wu & et al., 2018).

First of all, rural homestead registration system should be implemented. In rural areas, there are a large number of cases in which the right to use homestead is not registered and the right to use homestead cannot be confirmed when disputes arise in transactions. Because the countryside is a society of acquaintances, so the idea of only relying on honesty, credit and good customs to restrain the behavior of both sides of the transaction has become commonplace and deeply rooted in people’s hearts. But in today’s law-based society, this idea is not conducive to the stability of homestead use right trading market. Therefore, we must strengthen the implementation of the registration system of homestead use right.

Secondly, it is necessary to strengthen the relevant legislation on the circulation form, circulation condition, circulation procedure and supervision procedure of rural homestead use right, and continuously refine it so as to reduce the disputes arising in the transaction process of rural homestead use right. In the legislative process, we should closely contact with the actual situation, do a good job of visiting and investigating, summarize the problems that often occur in the process of rural homestead use right transaction, and solve them through legislation.

In addition, it is necessary to strengthen the guarantee of the economic attributes of rural homestead and

constantly improve and standardize the transfer market of rural homestead use right. Reasonably standardize the transaction price of the right to use rural homestead, improve the role and status of the market and the transaction subject rather than the government in the transaction process.

3.4 Improving the System for Inheriting the Right to Use Rural Land for Housing

First of all, the subject of inheritance of the right to use rural homestead should be expanded to a certain extent and not only confined to the decedent's internal members of the collective economic organization as the standard of the qualification of the subject of inheritance. Because the use right of rural homestead has a great economic attribute, the qualification of inheritance subject should be based on whether the successor and the decedent have an inheritance relationship in household registration and legal procedure. As it said in the reply of the Ministry of Natural Resources, the Ministry of Housing and Urban-Rural Development, the Ministry of Civil Affairs, the State Security Bureau, the Supreme People's Court, the Ministry of Agriculture and Rural Areas and the State Administration of Taxation to Recommendation No. 3226 of the Third Session of the Thirteenth National People's Congress: it is clear that farmers' right to use the homestead can be inherited and handled by the registered residence of children in urban areas according to law. Members of non-rural collective economic organizations, as long as they are legal heirs, should have the qualification of inheriting the right to use rural homestead.

Secondly, we should improve the related supporting system of inheritance of rural homestead right. For example, rural homestead land use registration system. Special departments can be set up in rural areas to make statistics and registration of the owners of the right to use the homestead, the size of the homestead area and the location of the homestead so as to facilitate the settlement of disputes over the inheritance of the right to use the homestead.

3.5 Improving Laws and Regulations Related to the Withdrawal System of Homestead Use Right

For the acquisition, exercise and transfer of the right to use homestead, relevant provisions have been made in Chapter 13 of the Civil Code, and there are more detailed provisions in the Land Management Law. However, the withdrawal of the right to use homestead has not been mentioned in the repealed Property Law and the current Civil Code. The withdrawal of homestead use right corresponds to the acquisition of homestead use right, which should be paid equal attention. In addition, the withdrawal of the right to use homestead has been successfully practiced in many provinces. Therefore, relevant laws and regulations should be supplemented and improved as soon as possible to make the withdrawal mechanism of homestead use right have laws to abide by.

3.6 Improving the Guarantee Mechanism for the Withdrawal of the Right to Use Rural Homestead

Due to the big differences in economic development and customs in various regions of China, it must be unrealistic to formulate a set of uniform provisions on the compensation methods and standards for the withdrawal of rural homestead use right. However, for the basic problems such as the subject scope and object scope of homestead use right withdrawal compensation, unified and specific provisions should be made in relevant laws and regulations, so as to improve the homestead withdrawal guarantee mechanism and avoid the infringement of rural residents' homestead use right by the abuse of rights by the government and individuals. For example, in the case of one household occupying multiple homesteads, whether the government needs to give compensation or reduce the compensation standard during expropriation; whether the object scope of homestead use right withdrawal compensation includes extended parts such as auxiliary homestead land.

In addition, in the process of improving the withdrawal mechanism of homestead use right, we should pay attention to the protection of farmers' interests, fully respect farmers' will, and improve the participation of rural residents in the withdrawal compensation of rural homestead use right. At the same time, the government should undertake the relevant work of law popularization, strengthen publicity, improve the legal awareness of farmers, help them understand the relevant professional knowledge of rural homestead use right withdrawal mechanism to enhance the ability of rural residents and to protect their own rights and interests.

3.7 Supplementing the Use Right of Homestead as Usufructuary Right

As mentioned above, the abolished Property Law and the current Civil Code have not made clear provisions on the usufruct of the right to use homestead as usufruct. The right to use rural homestead by law is a very important property interest for farmers. The law can limit the disposal of homestead by the owner, but the right to gain should also be endowed and protected to protect farmers' interests. Therefore, it is suggested that the content of the right to use homestead as usufructuary property should be gradually enriched in chapter 13 of the Right to Use Homestead, and related content of the right to profit from the right to use homestead should be added in the process of revising the Civil Code.

3.8 Formulating Local Regulations on the Right to Use Rural Homestead

In order to avoid policy conflicts in different regions; provinces and cities can formulate local laws and

regulations on the use of homestead according to their specific local conditions. First, make clear the concept and nature of homestead use right. Secondly, detailed regulations should be made on the acquisition, circulation and withdrawal of homestead use right, which should include but not limited to the identification of subject qualification of homestead use right, application process of homestead use right, circulation path and subject range of homestead use right, withdrawal compensation mechanism of homestead use right, etc. In addition, relevant legal responsibilities should also be provided for illegal acts such as occupying farmland for residential construction and building residential buildings without approval. To revitalize the unused rural land, the Chinese government adopted reform paths of homestead system. The key objectives of this reform path are to establish a fair homestead system, save intensive use and provide farmers right to voluntarily withdraw with compensation (China National People's Congress Network (CNPEN), (2018).

4. Conclusion

The system of the right to use rural homestead is an important system to protect the rights and interests of farmers in China. The reform path of the rural land system in China occurs under the system framework of collective ownership of rural land (Lingyan & et al., 2018). As a large agricultural country with a rural population of more than 500 million, China should pay more attention to the system of rural homestead use right, and constantly improve the relevant legal system to maintain the stable life of rural residents and promote the stable development of rural areas. Although the system of use right of rural homestead is relatively well in general, there are still some deficiencies. According to data from the Chinese Academy of Social Sciences, in 2018, 10.7% of rural homesteads went unused since the rural people moved to cities for work or other purposes, leaving their homesteads vacant. Since farmers often vacate their homesteads and do not possess any right to individual land ownership; therefore, they are encouraged to rent their homesteads only for commercial purposes. It is believed that the revised Land Administration Law 2020 will help to minimize restrictions on rural land development through its provision on right to transfer of rural homesteads. In China, a large number of outstanding scholars and experts have put forward valuable opinions on the reform path of rural homestead use right system from different perspectives. Based on the actual problems, this paper puts forward some targeted opinions on the actual problems of the right to use rural homestead in China, hoping to provide some directions for the reform of the right to use rural homestead.

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Authors' Contributions

Wang Shuwei: Conceptualization, Writing original draft, analysis. Liu Huimin, Wang Xing & Du Xinyu: Review, Editing & Proofreading. Islam Md. Ziaul: Editing & Proofreading.

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